vision of the Court, of that portion of the estate consisting of the 81,200 shares would give rise to serious practical difficulties in the running of the Company. Two alternative proposals have been put forward as possible solutions of the problem:

(a) By Mr. Das, that the application be dismissed with liberty to plaintiffs to apply from time to time, if so advised, (i) as to how the voting rights in respect of the trust share holding of 81,200 shares be exercised by defendant No. 1 at any shareholders' meeting in respect of any particular resolution that may be brought up at any such meeting; (ii) that the plaintiffs satisfy the Court that the manner in which 1st defendant proposes to exercise the voting powers in respect of any particular matter is improper and detrimental to the estate and the Company; (iii) that the plaintiffs satisfy the Court that the manner in which they propose the voting rights should be exercised in such matter is for the benefit of the estate and of the Company; and

(b) By Mr. Yeoh Cheang Lee, that an independent person having no interest in the estate or the Company be appointed a proxy in respect of the 81,200 shares. Another alternative would be to appoint the Public Trustee, if he were willing to act, trustee of the 81,200 shares.

But I do not think that any of these potential solutions suggests the right answer.

Mr. Das's solution overlooks the fundamental consideration that the co-trustees have a right to the benefit of the unanimity rule, which precludes the 1st defendant from using the votes at his discretion. I know of no grounds on which they should be required to move the Court for its approval of their wishes, which they are entitled to require their co-trustee to respect.

The other two solutions would be manifestly unsatisfactory when applied to the taking of policy decisions in a private company consisting of members of one family and would be likely to create even more trouble than the present "set-up" (if I may borrow the expression from the colloquial currency of today).

As I see it, there is here an isolated question which can and should be resolved *in vacuo*, and I think that the right way to resolve it is by making a negative, or prohibitory, order. Such an order would give effect to the well-settled principle that the trustees must act as one, and is not inconsistent with the relief asked for, although it is something less than what the plaintiffs seek. If the 1st defendant cannot agree with his co-trustees on any matter on which a poll is taken then the voting rights attached to the 81,200 shares cannot be exercised in respect of that matter at all.

I accordingly order that the 1st defendant shall not exercise the voting rights attached to the 81,200 shares in Foo Nyit Tse & Brothers Limited belonging to the estate of the Testator except in accordance with the unanimous decision of all the trustees.

Costs of all parties to be paid out of the estate.

Order accordingly.

Solicitor: *Shearn Delamore & Co.; Das & Co.; Maxwell, Kenion Cowdy & Jones; Gibb & Co.; Cheang Lee & Ong.*

Re ONG YEW TECK

[O. Cr. J. (Chua J.) February 4, 1960]

[Singapore — Habeas Corpus No. 2 of 1960]

Constitutional law — Habeas corpus — Criminal Law (Temporary Provisions) Ordinance, 1955, ss.47, 53 and 55(1) — Subjective test.

Habeas corpus — Arrest under Criminal Law (Temporary Provisions) Ordinance, 1955, s.55 — "Reason to believe."

This was an application for a writ of *habeas corpus* under section 375 of the Criminal Procedure Code. The applicant was arrested and detained under section 55 of the Criminal Law (Temporary Provisions) Ordinance, 1955 by a detective corporal who was directed by a superior officer to arrest the applicant.

The applicant contended (i) the arrest was illegal because the detective corporal when making the arrest under section 55(1) of the Ordinance had no reason to believe there were grounds which would justify the detention under section 47; (ii) section 55(1) imposes an objective test and hence the Court could examine whether there were in fact sufficient reasons to justify the detention.

Held: (1) the detective corporal who arrested the applicant was only the instrument of his superior officer and therefore the arrest was legal;

(2) on the proper interpretation of section 55(1) read in conjunction with section 53 which precludes the disclosure of facts prejudicial to the public interest and in the context of the whole legislation, it lays down a subjective test;

(3) in this case, as the superior officer honestly supposed that he had reason to believe the required thing the Court could not go behind his statement that he had such reason to believe.

Cases referred to:—

(1) *Nakkuda Ali* v. *Jayaratne*, [1951] A.C. 66.

(2) *Liversidge* v. *Anderson*, [1942] A.C. 206; [1941] 3 All E.R. 338.

HABEAS CORPUS.

David Marshall for the applicant.

A. V. Winslow (Solicitor-General) for the respondent.

Cur. Adv. Vult.

Chua J.: This is an application for a Writ of Habeas Corpus under the provisions of section 375 of the Criminal Procedure Code in the matter of Ong Yew Teck who is being detained in the lock-up at the Central Police Station. The Court granted an order nisi directing the Minister for Home Affairs and Commissioner of Police to show cause why the Writ should not be issued. The Minister in his affidavit stated that the applicant was arrested and detained by the police under the provisions of section 55 of the Criminal Law (Temporary Provisions) Ordinance, 1955 (hereinafter referred to as the Ordinance).

The facts are briefly these: In October 1959 Acting Deputy Superintendent of Police Ong Kian Tiong attached to the Secret Societies Branch of the Criminal Investigation Department, was instructed to inquire into the activities of the applicant and to consider whether any action should be taken under the provisions of the Ordinance. After making the necessary inquiries D.S.P. Ong Kian Tiong, on the 4th November 1959, instructed four of his detectives (including

Detective Corporal 894) to arrest the applicant. On the 11th January 1960 Detective Corporal 894 arrested the applicant and informed the applicant that he was being arrested under the Ordinance. The applicant was on the same day brought before D.S.P. Ong Kian Tiong who later ordered the applicant to be detained in the lock-up. Subsequently the Minister for Home Affairs received a recommendation to the effect that he should make an order for the detention of the applicant under section 47 of the Ordinance.

Section 55(1) of the Ordinance provides as follows:—

"55. - (1) Any police officer may without warrant arrest and detain pending enquiries any person in respect of whom he has reason to believe there are grounds which would justify the detention of such person under section 47 of this Ordinance."

Section 47 provides as follows:—

"47. Whenever the Minister is satisfied with respect to any person, whether such person be at large or in custody, that such person has been associated with activities of a criminal nature, the Minister may with the consent of the Public Prosecutor—

(a) if he is satisfied that it is necessary that such person be detained in the interests of public safety, peace and good order, by order under his hand direct that such person be detained for any period not exceeding one year from the date of such order; or

(b) if he is satisfied that it is necessary that such person be subject to the supervision of the police, by order direct that such person be subject to the supervision of the police for any period not exceeding three years from the date of such order."

The first point taken on behalf of the applicant is that the arrest was not in accordance with the provisions of section 55(1). It was submitted by Mr. Marshall, learned counsel for the applicant, that the applicant was arrested by detective corporal 894 under the provisions of section 55(1) and the Detective Corporal himself at the time he made the arrest had no reason to believe there were grounds which would justify the detention of the applicant under section 47 of the Ordinance and consequently the arrest of the applicant by Detective Corporal 894 was illegal.

I am unable to agree with this submission. It was D.S.P. Ong Kian Tiong who ordered the arrest of the applicant and the detective corporal was only his instrument. In my view the arrest of the applicant was an arrest made by D.S.P. Ong Kian Tiong within the meaning of section 55(1).

A more important point taken by the applicant is that section 55(1) imposes an objective test, in other words it is contended that since the jurisdiction of the police officer depends on whether he has reason to believe there are grounds which would justify the detention of the applicant under section 47 of the Ordinance, then the existence of such reason is a condition precedent to the police officer's jurisdiction and that the facts constituting the reason are for the Courts to find and appraise and not for the police officer.

This contention must depend primarily on the proper interpretation of section 55(1), which is a question of law.

In support of this contention the learned counsel for the applicant cited the case of *Nakkuda Ali* v. *Jayaratne.*[1] In that case the respondent, the Controller of Textiles in Ceylon cancelled the applicant's textile licence under Regulation 62 of the Defence (Control of Textiles) Regulations, 1945. Regulation 62 empowered the Controller to do so "where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer." The Judicial Committee of the Privy Council decided that the words "where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer" were to be treated as imposing a condition that there must in fact exist such reasonable grounds, known to the Controller, before he could validly exercise the power of cancellation.

The Solicitor-General on the other hand contends that section 55(1) imposes a subjective test, in other words that the Court could not inquire into the grounds for the belief which led to the arrest of the applicant. In support of this contention he cited the case of *Liversidge* v. *Anderson.*[2] In that case the plaintiff, who had been detained under the Defence (General Regulations 1939) Reg. 18B of the United Kingdom, brought an action against the Home Secretary for false imprisonment and that case directly involved a question as to the meaning of the words (in Reg. 18B) "if the Secretary of State has reasonable cause to believe any person to be of hostile associations . . . .". It was held by the House of Lords, Lord Atkin dissenting, that the Court could not inquire into the grounds for the belief which led to the making of the detention order.

The *dicta* in *Liversidge* v. *Anderson* was discussed in the case of *Nakkuda Ali* v. *Jayaratne.* Lord Radcliffe, who delivered the judgment of their Lordships, said, (at page 76) after referring to the decision of the House of Lords in *Liversidge* v. *Anderson:*

"Their Lordships do not adopt a similar construction of the words in reg. 62 which are now before them. Indeed, it would be a very unfortunate thing if the decision of Liversidge's case came to be regarded as laying down any general rule as to the construction of such phrases when they appear in statutory enactments. It is an authority for the proposition that the words 'if A.B. has reasonable cause to believe' are capable of the meaning 'if A.B. honestly thinks that he has reasonable cause to believe' and that in the context and attendant circumstances of Defence Regulation 18B they did in fact mean just that. But the elaborate consideration which the majority of the House gave to the context and circumstances before adopting that construction itself shows that there is no general principle that such words are to be so understood; and the dissenting speech of Lord Atkin at least serves as a reminder of the many occasions when they have been treated as meaning 'if there is in fact reasonable cause for A.B. so to believe'."

It is therefore clear law that in every case the degree of discretion conferred by a Statute or Regulation must be determined in reference to the Statute or Regulation in question.

I now come to the crucial point. Who is to decide the issue of "reason to believe"? D.S.P. Ong Kian Tiong himself or a Court? If it is for the Court to decide then the Court must have all the material evidence before it otherwise it would be futile to ask the Court to decide. It is quite clear that the information that D.S.P. Ong has are confidential and section 53 of the Ordinance provides as follows:

"53. Nothing in this Ordinance or in any rules made under section 59 of this Ordinance shall require the Chief Secretary or any other public servant to disclose facts which he considers it to be against the public interest to disclose."

D.S.P. Ong Kian Tiong therefore cannot be required to set out the grounds of his belief or to give the information which led him to the opinion which he formed. In fact in this case D.S.P. Ong Kian Tiong has declared that it would be against the public interest to disclose names, dates, times, places and other details relating to the activities of the applicant.

For these reasons I am of the opinion that section 55(1) imposes a subjective test and as D.S.P. Ong Kian Tiong honestly supposed that he had reason to believe the required thing this Court cannot go behind his statement that he had such reason to believe.

The order nisi must be discharged.

Order accordingly.

Solicitors: *Marshall & Smith.*

RAMANUJ PANDEY v. STEPHEN

[A. C. J. (Rose C.J.) February 8, 1960]

[Singapore — District Court Appeal No. 38 of 1959]

Money and Moneylending — Claim for recovery of loan and interest on promissory note executed before the Moneylenders Ordinance, 1959 came into operation — Whether barred by s.15 — Whether lender was "unlicensed moneylender" — Whether taking step in action for the recovery of money lent amounted to carrying on the business of a moneylender.

INTERPRETATION.

The appellant claimed against the respondent a sum of $399 being the principal and interest due on a promissory note for $350 dated 6th February 1959 and executed by the respondent. Before the final hearing of the action, the Moneylenders Ordinance, 1959 came into operation. Section 15 of the Ordinance provided that "no contract for the repayment of money lent after the coming into operation of this Ordinance by an unlicensed moneylender shall be enforceable." Counsel for the respondent contended that the appellant's action was thereby barred.

Held: (1) upon the ordinary rules of construction the words "money lent after the coming into operation of this Ordinance" must be read together and can only mean that the section only applies to loans made on or after the 11th of September 1959 — the date on which the Ordinance came into operation. To hold otherwise would be to equate the phrase "lent after the coming into operation" with "lent whether before or after the coming into operation." The respondent therefore failed on the very threshold of his case in that section 15 was not applicable to a loan made prior to the coming into operation of the Ordinance;

(2) there was no ambiguity in section 15 of the Ordinance and even if there was, then, upon the normal rule applicable to the construction of statutes, that ambiguity must be resolved in favour of the *status quo* and therefore cannot avail the respondent;

(3) even assuming that section 15 was applicable to a loan made prior to the coming into operation of the Ordinance, the type of moneylender contemplated by the section is a person who falls within the meaning of a "moneylender" in section 2 of the Ordinance at any time subsequent to the coming into operation of the Ordinance. To hold otherwise would lead to absurdities as regards actions pending at the time of the coming into operation of the Ordinance;

(4) a person who has ceased to carry on the business of a moneylender before the coming into operation of the Moneylenders Ordinance is not debarred from recovering what is due on his moneylending contracts by reason of the fact that he has not elected to take out a licence under section 5;

(5) there was no evidence that the appellant was an unlicensed moneylender within the meaning of section 15 of the Ordinance;

(6) the appeal must be allowed, the judgment of the Court below set aside and judgment must be entered for the appellant for the amount claimed.

Cases referred to:—

(1) *Hutchinson* v. *Jauncey* [1950] 1 K.B. 574.

(2) *Jonas* v. *Rosenberg* [1950] 2 K.B. 52.

DISTRICT COURT APPEAL.

C. H. Smith for the appellant.

Tan Boon Teik (Director of Legal Aid) for the respondent.

Cur. Adv. Vult.

Rose C.J.: The appellant's claim was against the respondent for the sum of $399 being the principal and interest due on a promissory note for $350 dated 6th February 1959 and executed by the respondent.

The matter came on for trial before the Second Civil District Judge on the 22nd of July, the 5th of August and the 12th of September 1959. The Moneylenders Ordinance, 1959 came into operation on the 11th of September 1959, that is to say, the day before the final hearing of the action.

Section 15 of the Ordinance provides that

"No contract for the repayment of money lent after the coming into operation of this Ordinance by an unlicensed moneylender shall be enforceable:"

Learned counsel for the respondent contends that the appellant's action is thereby barred. It seems to me that upon the ordinary rules of construction the words "money lent after the coming into operation of the Ordinance" must be read together and can only mean that the section only applies to loans made on or after the 11th of September 1959. To hold otherwise, in my view, would be to equate the phrase "lent after the coming into operation" with "lent whether before or after the coming into operation".

I do not myself consider that there is an ambiguity here, but even if there is then, upon the normal rule applicable to the construction of statutes, that ambiguity must be resolved in favour of the *status quo* and therefore cannot avail the respondent.

Incidentally, although the matter has no direct bearing on the point under consideration,